

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 86/Lab./AIL/J/2013,  
dated 7th June 2013)

## NOTIFICATION

Whereas, an award in I.D. No. 22/2011, dated 15-2-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Limited, Detergent Factory, Puducherry and its workman Thiru Marie Lucien, Puducherry, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PUDUCHERRY

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court.

*Friday, the 15th day of February 2013*

**I.D. No. 22/2011**

Marie Lucien .. Petitioner

*Versus*

The Managing Director, .. Respondent  
Hindustan Unilever Limited,  
Puducherry.

This industrial dispute coming on 7-2-2013 before me for final hearing in the presence of Thiru Durai Arumugam, representative for the petitioner Thiruvalargal L. Sathish, N. Krishnamurthy, T. Pravin and V. Veeraragavan, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

## AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 145/AIL/Lab./J/2011, dated 9-8-2011 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru A. Marie Lucien against the management of M/s. Hindustan Unilever Limited, Detergent Factory, Vadamangalam, Puducherry, over non-employment is justified?

(2) If justified, to what relief, the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his petition has stated as follows:

The petitioner was working as a permanent employee in the respondent company from 1-6-1996 and he was the active member of Hindustan Unilever Employees' Union and his last pay was ₹ 12,000 per month. On 17-11-2008, the respondent issued a charge sheet containing false charges against the petitioner that on 16-11-2008 in the Family Day Function, he threatened and damaged the shirt of one Ramamoorthy and also assaulted one Ganesan, who was the H.R. Officer. On 16-11-2008, the respondent celebrated the Family Day Function and his union instructed all the employees not to participate in the said function with their family and treat the said function as 'Black Day'. In the said function, there was shortage of food and the same was asked and argued by the petitioner's union with the said Ganesan. Hence, the said Ganesan, constructed the evidence and built a story against the petitioner. Then the enquiry was conducted against the petitioner and the domestic enquiry was one side and biased one and the Enquiry Officer has acted against the principles of natural justice and submitted the enquiry report by coming to the conclusion that the petitioner was the guilty of the charges framed against him and then terminated him from service. There was a victimisation of the petitioner on false and concocted charges. Hence, the petitioner moved the Conciliation Officer for remedy and he conducted the conciliation and since the conciliation proceedings ended in failure, the Labour Officer reported failure of conciliation. In pursuance, the Government of Puducherry has referred the said dispute for adjudication before this Court.

3. The respondent in his counter has stated as follows:

The petitioner was employed as unskilled worker from 1-9-1996 and he always exhibited his aggressive, subversive and temperamental character and would pick up unnecessary quarrels and duel with his shift supervisors, Plant in-charge and other officers of the company. Initially, the officers of the respondent orally warned him.

On 7-4-2007, the petitioner abused one Vijay Kumar, the then H.R. Officer and threatened him in a filthy language and he was charge sheeted on 17-4-2007 and the domestic enquiry was conducted and he was found guilty of the misconduct levelled against him by the Enquiry Officer and he was suspended for ten working days and kept him in probation for the next one year.

When the petitioner was in his probation period, on 16-11-2008 while the Family Day celebration of the factory was in progress, the petitioner went to the food distribution counter and without any provocation, pushed one Ramamourthy, Commercial Executive, tore his T-shirt and threatened him of dire consequences. Then the petitioner went to the snacks distribution counter and slapped one Kanessane, H.R. Executive and threatened him with dire consequences. Hence, the petitioner was charge sheeted on 17-11-2008 and the enquiry was conducted. The Enquiry Officer conducted the enquiry in utmost fairness and by adhering to the essential principles of natural justice. The Enquiry Officer submitted his detailed report on 22-2-2010 by coming to the conclusion that charges against the petitioner were proved. The respondent issued a second show cause notice along with the enquiry report to the petitioner on 20-10-2010 and the petitioner did not choose to reply. The respondent thereafter passed an order of termination on 9-11-2010. Since the misconduct committed by the petitioner was very grave in nature, the respondent had to impose the maximum punishment of dismissal. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R.14 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The contention of the petitioner is that he was working as a permanent employee in the respondent company from 1-6-1996 and he was the active member of Hindustan Unilever Employees' Union and on 17-11-2008 the respondent issued a charge sheet containing false charges against him that on 16-11-2008 in the Family Day Function, he threatened and damaged the shirt of one Ramamoorthy and also assaulted one Ganesan, who was the H.R. Officer. The petitioner further contended that on 16-11-2008 the respondent celebrated the Family Day Function and his union instructed all the employees not to

participate in the said function with their family and treat the said function as 'Black Day' and in the said function, there was shortage of food and the same was asked and argued by his union with the said Ganesan and hence, the said Ganesan constructed the evidence and built a story against him and there was a victimisation against him on false and concocted charges.

7. In order to prove his contention, the petitioner examined himself as PW.1 and marked Ex.P1 to Ex.P7. Ex.P1 is a bit notice issued by Hindustan Unilever Employees' Union, asking the employees to celebrate the Family Day Function as Black day. Ex.P2 is the warning letter issued by the management to the said union.

8. *Per contra*, the contention of the respondent is that on 7-4-2007 the petitioner abused one Vijay Kumar, the then H.R. Officer and threatened him in a filthy language and he was charge sheeted on 17-4-2007 and the domestic enquiry was conducted and he was found guilty of the misconduct levelled against him by the Enquiry Officer and he was suspended for ten working days and kept him in probation for the next one year. The respondent further contended that when the petitioner was in his probation period, on 16-11-2008 while the Family Day celebration of the factory was in progress, the petitioner went to the food distribution counter and without any provocation, pushed one Ramamourthy, Commercial Executive, tore his T-shirt and threatened him of dire consequences and then the petitioner went to the snacks distribution counter and slapped one Kanessane, H.R. Executive and threatened him with dire consequences and hence, the petitioner was charge sheeted on 17-11-2008 and the enquiry was conducted. The learned counsel for the respondent relied upon the following decisions to support his case:-

*CDJ 2008 SC 670:*

*Usha Breco Mazdoor Sangh Versus Management of M/s. Usha Breco Limited and Another:*

"Assault, intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be a union leader. The act does not encourage indiscipline. It will be a matter of some concern if the opinion of the Enquiry Officer can be totally ignored despite the fact that the management is precluded from adducing any fresh evidence before the Labour Court. A union leader does not enjoy immunity from being proceeded within a case of misconduct."

*CDJ 2005 SC 250:*

*Mahindra and Mahindra Limited Versus N.B. Naravade:*

"In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for less punishment in the absence of any extenuating factor referred to herein above."

*1999-III-LLJ (Supp) -1455:*

*Venugopal and Another Versus Management of Reed Relays and Electronics Limited, Madras and Another:*

"... In our opinion, courts should not encourage the use of indecorous or indecent and violent behavior, exhibiting thereby indiscipline. Such acts on the part of the workmen should be discouraged at any cost. Since the appellants were terminated from service for serious misconduct proved and established before the Labour Court, no interference is called for in the finding of the Labour Court, which is based on the evidence let in, in this case..".

*(1990)1 MLJ 355:*

*The Management of South India Sugars Limited Versus the Presiding Officer. Additional Labour Court and Another:*

"Thus, the legislature has taken care to discourage statutorily any riotous or violent behaviour on the part of the employee. It cannot be said that when a worker or employee is found guilty of riotous or violent behaviour, the punishment of dismissal is extreme or that it is shockingly disproportionate to his misconduct."

9. According to PW.1, on 16-11-2008 the respondent celebrated the Family Day Function and his union instructed all the employees not to participate in the said function with their family and treat the said function as 'Black day', in the said function, there was shortage of food and the same was asked and argued by the petitioner's union with the said Ganesan and hence, the said Ganesan constructed the evidence and built a story against the petitioner.

10. But RW.1 in his evidence has deposed that on 16-11-2008 while the Family Day Celebration of their factory was in progress in Om Sakthi Subiksha Mahal, the petitioner went to food distribution counter at 12.30 p.m. and without any provocation, pushed R. Ramamourthy, Commercial Executive, tore

his T-shirt and also threatened him of dire consequences and on intervention of one Vijay Kumar, the then H.R. Executive, the petitioner was moved from that place and subsequent to that at about 12.45 p.m. the petitioner went to the snacks distribution counter and without any provocation, slapped Kanessane, H.R. Executive, who was standing there and threatened him with dire consequences and security officer who was present there, rescued the said Kanessane and Vijay Kumar, escorted the petitioner out of Om Sakthi Subiksha Mahal.

11. Admittedly, the place of occurrence is situated at Tamil Nadu and outside the factory premises and hence it is the duty of the respondent to lodge a complaint before the concerned police station in respect of the said incident. But there is no complaint filed before the police station by the respondent in this regard. In fact RW.1 himself has admitted in his cross-examination that for the Family Day celebration, Kandamangalam police came for security purpose and there was no complaint filed before them for the said incident. The relevant portion of his evidence is as follows:-

"குடும்ப தின விழாவில் பாதுகாப்பிற்கு தமிழகத்தில் உள்ள கண்டமங்கலத்தில் உள்ள காவல் நிலையத்தில் இருந்து காவல் துறையினர் வந்தார்கள் என்றால் சரிதான்.

காவல் நிலையத்தில் அங்கு நடந்த சம்பவம் பற்றி புகார் ஏதும் கொடுக்கவில்லை என்றால் சரிதான்."

RW.1 in his evidence has deposed that at the time of incident, the petitioner tore the T-shirt of Ramamourthy. But the said T-shirt has not been produced and marked in the domestic enquiry and the same was admitted by RW.1 in his cross-examination. The relevant portion of his evidence runs as follows:-

"கீழ்க்கப்பட்ட டிசர்ட்டை உள்விசாரணையின்போது ஆஜர்படுத்தி குறியீடு செய்யப்பட்டதா என்றால் இல்லை."

12. According to RW.1, during the incident, the petitioner went to the snacks distribution counter and without any provocation, slapped G. Kanessane, H.R. Executive, who was standing there and threatened him with dire consequences. During the cross-examination, RW.1 in his cross-examination has stated that the management Medical Officer was running a clinic at Kandamangalam and the said Kanessane took treatment with the said Medical Officer at Kandamangalam, but there is no document produced in the enquiry to prove that he took treatment at concerned General Hospital. RW.1 has also admitted that there is also no document produced in the enquiry with regard to the telephonic conversation by the H.R. Executive with the said management doctor. The relevant portion of his evidence is as follows:-

“மனித வள மேம்பாட்டு அதிகாரி எதிர்மனுதாரர் நிர்வாக மருத்துவர் வசம் தொலைபேசியில் தொடர்பு கொண்டதை குறித்த ஆவணங்கள் எதையும் உள்விசாரணையின் போது தாக்கல் செய்யப்பட்டதா என்றால் தாக்கல் செய்யவில்லை. மனித வள அதிகாரி புதுவையில் மூலகுளத்தில் தான் வசித்து வந்தார் என்றால் சரிதான். எங்கள் நிர்வாகத்தின் மருத்துவர் கண்டமங்கலத்தில் தான் மருத்துவமனை வைத்து இருப்பதாகவும் அங்கு சென்றுதான் சிகிச்சை எடுத்துக் கொண்டதாக சொல்லியுள்ளார் என்றால் சரிதான். மனித வள அதிகாரி அரசு மருத்துவமனையில் எதுவும் சிகிச்சை செய்து கொண்டது குறித்து ஆவணங்கள் எதுவும் உள்விசாரணையில் தாக்கல் செய்யவில்லை என்றால் சரிதான்.”.

13. On the side of the respondent, the copy of the certificate issued by the management doctor was marked as Ex.M11 and the prescription issued by him as Ex.M12 in the enquiry proceedings. But it is nothing wonder in issuing the said certificate by the management doctor, as it is quite natural that the management doctor can act only in favour of the respondent. Under these circumstances, the document from any Government hospital would prove the case of the respondent that the petitioner assaulted the said Kanessane and sustained injuries. Hence, the documents under Ex.M11 and Ex.M12, which have been marked in the enquiry proceedings, are not in any way helpful to the case of the respondent. In the above circumstances, this court has come to the conclusion that the respondent has failed to prove that the petitioner pushed R. Ramamourthy, Commercial Executive, tore his T-shirt and also threatened him of dire consequences and on intervention of one Vijaykumar, the then H.R. Executive, the petitioner was moved from that place and subsequent to that at about 12.45 p.m., the petitioner went to the snacks distribution counter and without any provocation, slapped Kanessane, H.R. Executive, who was standing there and threatened him with dire consequences and consequently, the action taken against him based on the said incident cannot be sustained.

14. The learned counsel for the petitioner has submitted that the petitioner was an active member in Hindustan Unilever Employees' Union and the said union raised an issue in respect of service conditions of the respondent's employees under No. 1458/2009/LO(C)/AIL and another issue under No. 2563/2010/LO(C)/AIL in respect of national and festival holidays and same were pending before the Conciliation Officer and when the said conciliations were pending before the Conciliation Officer, the respondent has terminated the petitioner from service on 9-11-2010 and respondent had not followed section 33 (2) (b) of Industrial Disputes Act, 1947 and had dismissed the petitioner unlawfully and as per the said section, the employer may pass an order of dismissal or discharged and at the same time make an application for approval of the action taken by him and if the approval is not

granted under section 33 (2) (B) of Industrial Disputes Act, 1947, the order of the dismissal becomes ineffective from the date it was passed and failure to make application under the said section would render the order of dismissal inoperative. In order to support his claim, he relied upon the following decision:-

2002(1) L.L.N.639:

*Jaipur Zila Sahakari Bhoomi Vikas Bank Limited Versus Ram Gopal Sharma and Others:-*

“Industrial Disputes Act, 1947, section 33(2)(b), proviso (as amended in 1956) - If approval is not granted under section 33(2)(b) or failure to make application under section 33(2)(b) seeking approval, renders order of dismissal inoperative-Dismisal becomes ineffective from date it was passed - Employee becomes entitled to wages from date of dismissal.”.

15. In order to prove that the petitioner was an active member in the said union, the president of the said union was examined as PW.2. PW.2 in his evidence has deposed that the petitioner was a member in Hindustan Unilever Employees' Union and his union raised an issue in respect of service conditions of the respondent's employees under No. 1458/2009/LO(C)/AIL and another issue under No. 2563/2010/LO(C)/AIL in respect of national and festival holidays and same were pending before the Conciliation Officer and when the said conciliations were pending before the Conciliation Officer, the respondent has terminated the petitioner from service on 9-11-2010. In order to prove that the petitioner was an active member in the said union, PW.2 has marked the copy of the admission application as Ex.P7. PW.1 has marked the copy of the notice issued to the petitioner and the respondent in respect of issue of service conditions as Ex.P5 and the issue in respect of declaration of paid holidays as Ex.P6. Ex.P5 to Ex.P7 confirm the version of PW.2.

On the other hand, the learned counsel for the respondent has submitted that the petitioner is not a member of Hindustan Unilever Employees' Union and the petitioner has no nexus connection with the disputes which is pending before the Conciliation Officer and hence no approval is required from the Conciliation Officer, since the dispute raised before the Conciliation Officer was different from the issue under which the petitioner was dismissed. In order to prove his contention, he relied upon the following decisions:-

CDJ 1962 SC 016:

*Digwadih Colliery Versus Ramji Singh:*

“The respondent's case set out in this application appears to be that, because there was reference No. 60 of 1959 pending between the appellant and some of its employees, section 33(2) applied, but unless it is known as to what was the nature of the dispute pending in the said reference, it would plainly be impossible to decide whether the respondent is a workman concerned within the

meaning of section 33(2). In his application, the respondent has made no averment about the nature of the said dispute; and so the tribunal was clearly in error in holding that the broad construction, of section 33(2) automatically led to, the conclusion that the respondent was the workman concerned and could, therefore, claim the prosecution of section 33(2).”.

*1992-1-L.L.J.837-Madras :*

*Rajagopal and Others Versus E.I.D. Party Limited and Another:*

“10. In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the union, which sponsored the dispute the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner.”.

16. The respondent themselves admitted that there were two conciliations pending before the Conciliation Officer, but they stated that the said conciliations are general dispute and not raised by the petitioner. Admittedly, the said conciliations were pending before the Conciliation Officer with regard to the service conditions of the respondent employees and declaration of national and festival holidays. When PW.2 has categorically stated that the petitioner was an active member in their union and two conciliations were pending before the Conciliation Officer with regard to the service conditions of the employees of the respondent company and declaration of national and festival holidays at the time of termination of the petitioner, the said conciliations were also covered with the petitioner, who was the employee of the respondent company. In the above circumstance, the respondent has acted against the abovesaid proviso. Therefore, the dismissal order passed by the respondent management is inoperative one.

17. The learned counsel for the petitioner has submitted that the domestic enquiry conducted against the petitioner was in violation of principles of natural justice, as Enquiry Officer did not consider the deposition of the witness in the enquiry proceedings.

18. *Per contra*, the contention of the learned counsel for the respondent is that the enquiry was conducted in a free and fair manner, giving full opportunity to the petitioner to contest the charges on merits and all the essential requisites of a fair trial were scrupulously followed.

19. On the side of the petitioner, the enquiry proceedings was marked as Ex.P4. A perusal of Ex.P4 reveals that from charge sheeting the petitioner to issuing termination order were conducted in Tamil and the Enquiry Officer gave copies of the documents as well as the list of witnesses produced by the respondent to the petitioner and the Enquiry Officer permitted the petitioner to have defence assistance and the Enquiry Officer gave sufficient opportunity to the petitioner and his defense assistant to cross-examine the respondent's witnesses. A perusal of Ex.P4 further reveals that the petitioner was permitted to examine his witnesses and as well as to cross-examine the respondent's witnesses and the enquiry report was given to the petitioner and then second show cause notice was given to the petitioner along with the enquiry report, giving him full opportunity to submit his explanation on the findings of the Enquiry Officer. Hence, the enquiry has been conducted in a free and fair manner after following all the requisite principles of natural justice. But as already stated when the respondent has not established the alleged act of the petitioner, the action taken against him cannot be sustained.

20. The contention of the learned counsel for the petitioner has submitted that the alleged incident was happened only out of factory premises and out of jurisdiction of Puducherry *i.e.*, at Tamil Nadu and hence the respondent has no jurisdiction in the place of Tamil Nadu, which the alleged incident was happened and also the standing order signed by the Certifying Officer and as such there is no scope to take action beyond the extra territorial jurisdiction limit.

21. *Per contra*, the contention of the respondent is that it is true that the petitioner had assaulted the officer of the respondent outside the four walls of respondent's factory, but that by no means, mitigate his offence and more importantly, the assault was intrinsically related to the employment of the petitioner. The learned counsel for the respondent has submitted that the petitioner was amongst other charges, charge sheeted under clause 39(118) of the certified standing orders of the company, which runs as follows:-

“Commission of any act subversive of discipline or good behaviour © Outside the company's premises if it is directly affecting the discipline or administration of the Company or of its is directly linked up with the general relationships of the

employer and employees or has a direct connection with the contentment of the men at work or has a material bearing on the smooth and efficient working of the concern or is prejudicial to the interest of the company.”.

22. There is no dispute that the alleged occurrence took place outside the factory premises. The said clause of standing order has not been denied by the petitioner. The said standing orders of the company declares any subversive conduct of workers outside the factory as misconduct provided that it is directly linked up with general relationships of the employer and employees. The function was organised by the respondent for the workers and their family and the outsiders were strictly prohibited and only because of the petitioner's employment, he was allowed to enter inside the function hall. Admittedly, there was heated argument between the petitioner and the officers of the respondent management. Hence, it is directly linked up with general relationships of the employer and the employees and the management took action against the petitioner for the alleged act took place outside the factory premises, but it has not been established by them through oral and documentary evidence. In the above circumstance, the contention of the learned counsel for the petitioner that the respondent cannot take action against the petitioner for the alleged occurrence, took place outside the factory premises, as there is no jurisdiction, cannot be accepted.

23. For the abovesaid reasons, this court has come to the conclusion that the order, terminating the petitioner from service is illegal for the following reasons:-

(a) The respondent has not established that the petitioner has pushed one R. Ramamourthy, tore his T-shirt, slapped the H.R. Executive and threatened them with dire consequences;

(b) The respondent has acted against section 33(2)(b) of Industrial Disputes Act and therefore, the dismissal order passed by the respondent management is inoperative one.

Hence, the termination order issued by the respondent is liable to be set aside and consequently, the petitioner is entitled to reinstatement with continuity of service with back wages and other attendant benefits. Accordingly, this point is answered.

24. In the result, the industrial dispute is allowed and the petitioner is entitled for reinstatement with continuity of service and with back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 15th day of February 2013.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

*List of petitioner's witnesses :*

- PW.1 — 27-9-2012 — Marie Lucien  
PW.2 — 9-11-2012 — Ezhumalai

*List of petitioner exhibits :*

- Ex.P1 — Bit notice issued by petitioner union  
Ex.P2 — Copy of the letter issued by the respondent to the petitioner union, dated 17-11-2008.  
Ex.P3 — Copy of the termination order issued to the petitioner.  
Ex.P4 — Copy of the enquiry proceedings  
Ex.P5 — Copy of the enquiry notice, dated 14-7-2009.  
Ex.P6 — Copy of the enquiry notice, dated 2-11-2010.  
Ex.P7 — Copy of the admission application of the petitioner, dated 16-3-2008.

*List of respondent's witness :*

- RW.1 — 21-12-2012 Arokia Berdila Anand, H.R. Executive.

*List of respondent's exhibits:*

- Ex.R1 — Copy of the charge sheet issued to the petitioner, dated 1-12-2008.  
Ex.R2 — Copy of the warning letter, dated 17-11-2008 issued to the petitioner.  
Ex.R3 — Copy of the charge sheet issued to the petitioner, dated 17-4-2007.  
Ex.R4 — Copy of the postal acknowledgment  
Ex.R5 — Copy of Memorandum of Settlement, & dated 25-8-2008.  
Ex.R6  
Ex.R7 — Copy of enquiry proceedings  
Ex.R8 — Copy of the enquiry report, dated 22-2-2010.  
Ex.R9 — Copy of the acknowledgment card signed by the petitioner.  
Ex.R10 — Copy of the termination order, dated 9-11-2010.  
Ex.R11 — Copy of the notice of enquiry to the respondent, dated 6-1-2011.  
Ex.R12 — Copy of the reply given by the petitioner to the Labour Officer, dated 15-2-2011.

Ex.R13 — Copy of the failure report, dated 20-5-2011.

Ex.R14 — Copy of the complete set of documents containing petitioner's previous similar conduct.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 89/Lab./AIL/J/2013, dated 13th June 2013)

**NOTIFICATION**

Whereas, an award in I.D.No. 50/2012, dated 28-11-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Soundararaja Mills Ltd., Karaikal and Soundararaja Mills Thozhilalar Nala Vazhvu Sangam, Karaikal, over non-payment of wages for the strike/lockout period during the year, 2007 has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court  
Karaikal Camp.

*Wednesday, the 28th day of November 2013*

**I.D. No. 50/2012**

The President,  
Soundararaja Spinning Mills Thozhilalar  
Nalavazhvu Sangam,  
Nedungadu, Karaikal. . . Petitioner

*Versus*

The Management,  
Soundararaja Spinning Mills Ltd.,  
Nedungadu, Karaikal. . . Respondent

This industrial dispute coming on 26-11-2012 for final hearing before me in the presence of Thiru N. Ramar, Representative for the petitioner, Thiru R. Thambiraj, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

**AWARD**

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.102/AIL/Lab./J/2010, dated 12-5-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent *viz.*,

(1) Whether the demand of Soundararaja Mills Nala Vazhvu Sangam seeking for payment of wages for the strike/lockout period during 2007 by the management of M/s. Soundararaja Spinning Mills, Karaikal is justified or not?

(2) If justified, to what relief the union is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The bonus for the period 2006-2007 was not paid to the workmen of Soundararaja Mills, Nedungadu. Hence, the above workmen were unable to celebrate the Deepavali. It was announced by the management that the bonus will be paid before one day of Deepavali *i.e.* on 7-11-2007. When the workers tried to get the bonus, the management has not prepared to pay the bonus uniformly but they tried to pay the bonus in three type of bonus as 11%, 20% and 35% by dividing the workers in three categories. But the workers insisted to pay the same amount of bonus to all the section of workmen uniformly.

The management has stated that they have entered into 18(1) agreement with INTUC and LPF Union. But the petitioners were not informed about the alleged 18(1) settlement and hence the alleged settlement is illegal and it will not bind the petitioner's union. But the management threatened the workers that they will close the factory, if the bonus was not received by the workers.

On 7-11-2007 when the workers, those who have presented their ticket to the timekeeper for the II and III shift, were not permitted to attend the work within the campus. After celebrating Deepavali, the workers went to I shift as usual on 9-11-2007 at 6.30 a.m. But in order to receive the bonus by the workers as declared by the management, the management announced the lockout without any notice and permission from the government. After the 1st shift

on 7-11-2007 the workers availed Deepavali on 8-11-2007 and further those who attended work for 1st shift on the next day on 9-11-2007 cannot be deemed to be indulged in strike. It is also equally bad on the part of the management of saying that those women workers went to celebrate Deepavali at their house who were staying in the mill were threatened and sent by the workers. In the conciliation talks, held on 9-11-2007 before the Karaikal District Collector and Labour Officers, the workers showed their willingness for work. It was advised by the above officials that the management can lift the lockout and the bonus talks can be separately held, but the management wantonly refused to lift the lockout. The management insisted the workers by threatening them to receive the bonus as per their above ratio fixed. Hence, this industrial dispute is filed directing the respondent to pay the salary and other benefits for the period of lockout and the period of refusal of work and other benefits.

3. In the counter statement, the respondent has stated as follows:-

This petition is baseless and has to be dismissed *in limine*. Even as per the Industrial Disputes Act and the principles laid down by the Hon'ble High Court and Apex Court, this petition is not maintainable.

The petitioner has got no right under section 2(F) of Industrial Disputes Act to prefer this petition. The INTUC and LPF are the only approved labour unions. The workers of the respondent management are all the members of the abovesaid union. Hence, the abovesaid issues have to be raised at the first instance as the primary issue and to be decided as the first instance.

The settlement under section 18(1) of Industrial Disputes Act was entered on 6-11-2007 between the management and INTUC and LPF union regarding bonus pertaining to 2006-2007. On 7-11-2007 about 3.00 p.m. without any reason, the workers were undergoing internal strike without issuing any notice to the management. Hence, the management requested the workers to go back for their work and warned them that the salary for the eight days will not be disbursed. But the workers were not yielded the warning of the management. Notice was given to the Labour Department. The workers were not only indulged in illegal strike, but also restrained the women workers from attending their duty and they also threatened the women workers to vacate the hostel. To protect the properties of the company and the welfare of the workmen in lieu of the internal illegal strike, the management declared the lockout on 9-11-2007 within the purview of section 24(3) of

Industrial Disputes Act. In the above circumstances, some of the workers, who indulged in illegal strike came back to work on 25-11-2007. Hence, the management lifted the lockout on 25-11-2007.

As per the agreement dated 6-11-2007, it was decided to issue 8.33% bonus and 2.67% incentive and the same was agreed by the workers and it is not correct that the management has announced the bonus by dividing the workers in three categories, as stated by the petitioner. The claim of the petitioner's union that the salary and other benefits to be given to the workers, who have not attended duty is against the principles of 'no work, no pay' and against the judgments passed by the Hon'ble Apex Court and High Courts. Hence, the INTUC and LPF unions have withdrawn the present industrial dispute. as per the agreement dated 26-8-2008 that for the period of lockout, there will be no salary and advance given to the workers. Hence, as per the said agreement dated 26-8-2008, the present industrial dispute. filed by the petitioner is against the law and therefore, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R25 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The contention of the petitioner is that the respondent announced the bonus by dividing the workers in three categories, which was objected by the workers and on 7-11-2007 the workers went to attend I and II shift and they were insisted to receive the bonus as announced by the management and since the workers refused for the same, they were not permitted to enter inside the factory. The petitioner further contended that after celebrating Deepavali, the workers went to shift on 9-11-2007, the management declared the lockout without any notice. In order to prove their contention, one of the employees working in the respondent factory was examined as PW1. PW1 in his evidence has deposed as stated in his claim statement. During the cross-examination, PW1 has denied the suggestion that they conducted the stay in strike from 7-11-2007.

7. *Per contra*, the contention of the respondent is that the workers went on illegal stay in strike against the 18(1) settlement with two unions regarding bonus for the year 2006-2007 and hence the mill announced the lockout consequent on the illegal strike by the workers. In order to prove their claim, the Personnel Manager of the respondent factory was examined as RW1. RW1 in his evidence has deposed as stated in their counter.



8. Now this court has to see whether the lockout announced by the respondent management is legal or not.

9. Section 22(2) of Industrial Disputes Act defines when the employer can declare lockout. The said section runs as follows:-

22(2) No employer carrying on any public utility service shall lockout any of his workmen-

(a) without giving them notice of lockout as hereinafter provided, within six weeks before locking out; or

(b) within fourteen days of giving such notice; or  
© before the expiry of the date of lockout specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

From the above, it can be seen that before declaring lockout, the employer should have given notice within six weeks to their workmen. In this case, no such notice was given to the workers by the respondent management. Hence, the lockout announced by the respondent management from 9-11-2007 is illegal.

10. The learned counsel for the respondent has submitted that on 7-11-2007 about 3.00 p.m. without any reason, the workers undergoing internal strike without issuing any notice to the management. But the petitioner has stated that when the workers went to attend II and III shift, they were threatened by the respondent management that if the workers refused to receive the bonus, as declared by them, they will not be permitted to work and after celebrating Deepavali festival on 8-11-2007, they went to factory to attend the I shift on 9-11-2007, but the respondent management announced the lockout without any notice to workers and prior permission from the concerned authority and mentioned in the ticket of the workers as SIS (Stay In Strike).

11. On the side of the respondent, the copy of the failure report dated 6-2-2008 has been marked as Ex.R23. A perusal of Ex.R23 reveals that during the conciliation, the management stated that the mill announced the lockout consequent on the illegal strike by the workers, but the union denied the statement that they are ready to work and requested to lift the lockout and the Labour Officer advised the management to lift the lockout immediately and the workers to go for work to maintain industrial peace and also advised the union to file a separate petition regarding bonus issue, but the lockout was not lifted by the respondent management. A perusal of Ex.R23 further reveals that the workers involved in road roko and it created law and order problem and hence the Karaikal District Administration intervened in this matter and the District Collector conducted several rounds of talks with both parties and the main issue of the dispute raised by the workers was, wages for the lockout period, which was denied by the management

and finally an agreement was arrived at between both parties before the District Collector, Karaikal under section 18(1) of the Industrial Disputes Act and the lockout was lifted and the workers resumed work.

12. RW1 has marked the copy of the Settlement under section 18(1) of Industrial Disputes Act, 1947 and the point No.7 of the said agreement runs as follows:-

“The management has to deposit a sum of ₹ 3,00,000 in the name of the District Collector. The dispute regarding the strike and lockout has to be referred to the Labour Court for adjudication. The award of the Labour Court would bind both parties. They shall not go for appeal in the issue.”

After this settlement, a petition was filed by the President, Soundararaja Mills Thozhilalargal Nala Vazhvu Sangam requesting the authority to refer the dispute of the strike and lockout to the Labour Court for adjudication as per the 18(1) Settlement, dated 26-11-2007.

13. Ex.R23 is a failure report sent by the Labour Officer, in whose presence, the conciliation was held and hence he is a competent person to speak about the alleged stay in strike by the workers. The union has denied the statement of respondent management that the workers went on stay in strike and they are ready to work and requested to lift the lockout, as mentioned in Ex.R23 by the Labour Officer. As per the version of petitioner, the workers were insisted by the respondent management to receive the bonus as declared by them, otherwise they will not be permitted to enter into the factory premises. Hence, the burden is cast upon the respondent to prove that the workers went on stay in strike. But the respondent has not examined any witness or filed any document to prove that the workers went on stay in strike. In the above circumstances, the lockout declared by the respondent is illegal and consequently, the petitioner union is entitled for the salary and other benefit for the lockout period according to law. This point is answered accordingly.

14. In the result, the industrial dispute is allowed and the petitioner union is entitled for salary and other benefits for the lockout period according to law. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 28th day of November, 2012.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

*List of witnesses examined for the petitioner:*

PW.1 — 4-1-2011 Mariyappan

*List of witnesses examined for the respondent:*

RW.1 — 12-3-2012 John Amalraj

*List of exhibits marked for the petitioner:*

- Ex.P1 — Copy of the bonus slip.
- Ex.P2 — Copy of the letter, dated 11-11-2007 sent by the petitioner union to the District Collector.
- Ex.P3 — Copy of the letter, dated 19-11-2007 sent by the petitioner union to the Labour Officer.
- Ex.P4 — Copy of the settlement under section 18(1) of Industrial Disputes Act.
- Ex.P5 — Copy of the public holidays and restricted holidays.
- Ex.P6 — Copy of the letter, dated 18-6-2008 sent to Labour Officer by respondent.
- Ex.P7 — Copy of the letter, dated 15-9-2009 sent by the petitioner union to the Labour Officer.
- Ex.P8 — Copy of the failure report, dated 18-9-2009.

*List of exhibits marked for the respondent:*

- Ex.R1 — Copy of the settlement under section 18(1) of Industrial Disputes Act.
- Ex.R2 — Copy of the letter, dated 18-6-2008 sent to the Labour Officer by the respondent management.
- Ex.R3 — Settlement under section 18(1) of Industrial Disputes Act, dated 6-11-2007.
- Ex.R4 — Notice dated, 7-11-2007 by the respondent management.
- Ex.R5 — Copy of the letter sent by the respondent to the Labour Officer, dated 7-11-2007.
- Ex.R6 — Notice dated, 7-11-2007 sent by the respondent management.
- Ex.R7 — Copy of the letter, dated 7-11-2007 by the respondent management to Labour Officer.
- Ex.R8 — Notice, dated 9-11-2007 by the respondent management.
- Ex.R9 — Letter, dated 9-11-2007 sent by the respondent management to the Labour Officer.
- Ex.R10 — Letter, dated 9-11-2007 sent by the respondent management to the Labour Office.
- Ex.R11 — Notice of enquiry, dated 9-11-2007 sent to both parties.
- Ex.R12 — Paper cutting, dated 13-11-2007.
- Ex.R13 — Copy of the notice, dated 16-11-2007.
- Ex.R14 — Notice published by respondent management.
- Ex.R15 — Notice, dated 17-11-2007 by the respondent management.

- Ex.R16 — Letter, dated 22-11-2007 sent by the respondent to Labour Officer.
- Ex.R17 — Copy of the notice, dated 24-11-2007 by the respondent.
- Ex.R18 — Copy of the notice, dated 25-11-2007 by the respondent.
- Ex.R19 — Letter, dated 25-11-2007 by the respondent to the Labour Officer.
- Ex.R20 — Notice, dated 26-11-2007 by the respondent.
- Ex.R21 — Notice of remarks, dated 27-11-2007 sent by the Labour Officer to the respondent.
- Ex.R22 — Copy of the letter, dated 17-12-2007 sent by the respondent to the Labour Officer.
- Ex.R23 — Copy of the failure report, dated 6-2-2008.
- Ex.R24 — Copy of the letter, dated 15-2-2008 sent by the respondent to the Labour Officer.
- Ex.R25 — Copy of the failure report, dated 18-9-2009.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

(GO. Rt. No. 90/AIL/Lab/J/2013, dated 13th June 2013)

**NOTIFICATION**

Whereas, an award in I.D.No. 24/2012, dated 13-3-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Chemcrown Exports and Suolificio Linea Italia (P) Ltd., Thozhilalargal Sangam against the management of M/s. Chemcrown Exports Ltd., Unit-III and Suolificio Linea Italia (India ) Pvt., Ltd., Puducherry, over non-employment of 12 employees has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O.Ms.No.20/91/Lab/L., dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.  
Presiding Officer, Labour Court.

*Wednesday, the 13th day of March, 2013.*

**I.D. No. 24/2012**

The President,  
Chemcrown Exports and Suolificio Linea  
Italia (P) Limited, Thozhilalargal Sangam,  
Sedarapet, Puducherry. . . Petitioner

*Versus*

1. The Managing Director,  
Chemcrown Exports Unit III,  
Puducherry.
2. The Managing Director,  
Suolificio Linea Italia (India) (P) Ltd.,  
Puducherry. . . Respondent

This industrial dispute coming on this day for hearing before me in the presence of Thiru R.T. Shankar, Advocate for the petitioner, M/s. Law Solvers, Advocate for the first respondent, Thiru K. Babu and Thiru C. Arivajagne, Advocates for the second respondent, upon perusing the case records, this court passed the following:

**AWARD**

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.114/AIL/Lab./J/2012, dated 13-7-2012 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by the union workmen Chemcrown Exports & Suolificio Linea Italia (P) Ltd. Thozhilalargal Sangam against the management of M/s. Suolificio Linea Italia (India) Pvt. Ltd., over non-employment of 12 employees *viz.*, 1. A. Ravichandran, 2. K. Kaliyamoorthy, 3. A. Subramanian, 4. A. Lakshmanan, 5. E. Selvam, 6. T. Srinivasan, 7. K. Ezhumalai, 8. S. Ramesh, 9. A. Arumaiselvam, 10. R. Murugan, 11. P. Sekar, and 12. S. Magesh are justified?

(2) If justified, to what relief, the workmen are entitled to?

(3) Whether the management of M/s. Chemcrown Exports Ltd., Unit III, Sedarapet, Puducherry is liable to pay the closure compensation to the above mentioned employees? If so, to give appropriate directions?

(4) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. M/s. Law Solvers filed Form-F for the first respondent and Thiru K. Babu and Thiru C. Arivajagne filed Form-F for the second respondent, but they have not filed the counter statement in spite of several opportunities given. Hence, this court ordered for *ex parte* evidence and accordingly one Ravichandran was examined as PW1 and through him, Ex.P1 to Ex.P24 were marked. A perusal of those documents would clearly prove that the first and second respondents are one and the same management and hence the second respondent hereby directed to reinstate the petition mentioned workmen with continuity of service and full back wages and other attendant benefits with costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 13th day of March 2013.

**T. MOHANDASS**  
Presiding Officer,  
Labour Court, Puducherry.

*List of petitioner's witness :*

PW1 - 13-2-2013-Ravichandran

*List of petitioner's exhibits:-*

- Ex.P1 — Notice of closure, dated 21-2-2011
- Ex.P2 — Letter sent by the union dated 9-3-2011
- Ex.P3 — Conciliation failure report, dated 20-4-2012
- Ex.P4 — Reference notification by Government of Puducherry, dated 13-7-2012
- Ex.P5 — Copy of the registration certificate of the union, dated 26-3-2003
- Ex.P6 — Company master details for 1st respondent, dated 20-11-2011.
- Ex.P7 — Company master details for 2nd respondent, dated 20-11-2011.
- Ex.P8 — Appointment order of Sundaramoorthy, dated 1-7-1998.
- Ex.P9 — Appointment order of Karthikeyan, dated 1-8-1996.
- Ex.P10 — Transfer order of Karthikeyan, dated 30-3-2000.
- Ex.P11 — Appointment order of Ramesh, dated 2-5-1997.
- Ex.P12 — Salary bill of Ramesh for the month of May 2010.
- Ex.P13 — Salary bill of Ezhilarasan in 1st and 2nd respondents.
- Ex.P14 — Salary bill of Velmurugan for 1st and 2nd respondents.

- Ex.P15 — Salary bills of Thanasekar for 1st and 2nd respondents.
- Ex.P16 — Salary bills of Sundaramoorthy in 1st and 2nd respondents.
- Ex.P17 — Letter dated 25-9-2009 sent by the union to the 1st respondent.
- Ex.P18 — Letter dated 4-10-2010 sent by the union.
- Ex.P19 — Letter dated 14-6-2010 sent by the union.
- Ex.P20 — Agreement dated 15-2-2007 entered into between the union and both respondents.
- Ex.P21 — Agreement dated 28-4-2010 entered into between the union and both respondents.
- Ex.P22 — Reply dated 14-9-2012 sent by the Labour Department under RTA.
- Ex.P23 — Copy of licence challenged from the name of Chemcrown to Suolificio Linea Italia.
- Ex.P24 — Confirmation order, dated 1-7-1994 of Ravichandran.

*List of respondent's witnesses : Nil*

*List of respondent's exhibits : Nil*

**T. MOHANDASS**  
Presiding Officer,  
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(GO. Rt. No. 91/Lab./AIL/J/2013, dated 13th June 2013)*

**NOTIFICATION**

Whereas, an award in I.D. No. 31/2011, dated 8-3-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Sundarakrishna Bus Service, Puducherry and one Thiru R. Kaliyaperumal over non-payment of statutory claims and retrenchment compensation has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present : Thiru T. MOHANDASS, M.A., M.L.,*  
Presiding Officer, Labour Court

*Friday, the 8th day of March 2013*

**I.D. No. 31/2011**

R. Kaliyaperumal . . . Petitioner

*Versus*

The Managing Director,  
Sri Sundarakrishna Bus Service,  
Puducherry. . . Respondent

This industrial dispute coming on this day for hearing before me in the presence of Thiru K. Velmurugan, Advocate for the petitioner, Thiru Elaya Natarajan, Advocate for the respondent, upon perusing the case records, this court passed the following:

**AWARD**

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.181/AIL/Lab./J/2011, dated 24-10-2011 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru R. Kaliyaperumal against the management of M/s. Sundarakrishna Bus Service, Puducherry over non-payment of statutory claims and retrenchment compensation is justified?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. When the above industrial dispute came up for filing counter, the respondent called absent and no representation from him. Today the petitioner was examined as PW.1 and through him, Ex.P1 to Ex.P5 were marked. The documents under Ex.P1 to Ex.P5 have not been challenged by the respondent. Claim proved. Hence, the industrial dispute is allowed with costs and the respondent is directed to pay the statutory dues, retirement benefits and retrenchment compensation as per law from the period from 1969 to 1982.

Typed to my dictation, corrected and pronounced by me in the open court on this the 8th day of March 2013.

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

*List of petitioner's witness:*

PW.1 — 8-3-2013 Kaliyaperumal

*List of petitioner's exhibits:*

Ex.P1 — Copy of the counter, dated 14-6-2005 filed by the respondent before Labour Officer

Ex.P2 — Copy of the letter, dated 21-5-2009 by petitioner to Labour Officer.

Ex.P3 — Copy of the legal notice, dated 22-12-2010 by respondents.

Ex.P4 — Copy of the failure report, dated 10-9-2011

Ex.P5 — Copy of the letter, dated 24-10-2011 by Under Secretary to Government.

*List of respondent witness: Nil**List of respondent exhibits: Nil*

**T. MOHANDASS,**  
Presiding Officer, Labour Court,  
Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(G.O. Rt. No. 92/Lab./AIL/J/2013, dated 14th June 2013)***NOTIFICATION**

Whereas, an award in I.D. No. 37/2007, dated 15-2-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Superfil Products Limited, Puducherry and its workman Thiru S. Selvam over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court.

*Friday, the 15th day of February 2013*

**I.D. No. 37/2007**

Selvam,  
S/o. Sowrirajan  
2, Thirumoola Nagar,  
Mudaliarpet, Puducherry. . . Petitioner

*Versus*

Superfil Products Limited,  
Rep. by its Managing Director,  
Mangalam Post, Puducherry. . . Respondent

This industrial dispute coming on 14-2-2013 for final hearing before me in the presence of Thiru P.R. Thiruneelakandan, Advocate for the petitioner, Thiruvalargal R. Ilancheliyan, R. Thilagavathi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

**AWARD**

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.160/Lab./AIL/J/2008, dated 3-12-2007 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*

(1) Whether the dispute raised by the petitioner Thiru S. Selvam, against the management of M/s. Superfil Products Limited, Puducherry over non-employment is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his petition has stated as follows:—

The respondent factory was started in the year 1996 as Swastic Filaments (P) Limited, and later the said factory was acquired by the present respondent management. The petitioner is the ITI holder and he joined in the year 1998 as operator. He was the President of the trade union in the respondent management namely Superfil Products Workers Union. His union raised the charter of demand on 10-3-2004 where the union demanded increase of wage and other benefits. The respondent

management did not want the petitioner union activity in insisting the respondent to accede the charter of demand and they decided to victimise the petitioner and the office bearer of the union.

The respondent management issued a charge memo dated 24-3-2005 alleging that the petitioner slept during the working hours on 14-3-2005. They issued another charge sheet dated 19-3-2005 for the above said alleged incident with the same allegation along with new allegation that the petitioner assaulted the officials of the respondent management. They sent another charge sheet dated 14-3-2005 with colourful allegation against the petitioner. The petitioner submitted his explanation for all these charge sheets dated 26-3-2005.

Then the respondent issued the suspension order dated 14-3-2005 and issued the enquiry notice dated 29-3-2005, wherein the respondent stated that the petitioner shall appear before the Enquiry Officer at T. Nagar, Chennai by letter, dated 31-3-2005. The petitioner made his objection to appear before the Enquiry Officer at Chennai and requested the respondent to conduct the enquiry at factory premises. Then the respondent issued enquiry notice, dated 2-4-2005 and the enquiry was held on 9-4-2005 and on 14-4-2005 thereafter the enquiry was adjourned to 21-4-2005 for further enquiry. The petitioner went to the respondent factory to attend the enquiry on 21-4-2005, but no enquiry was conducted by the respondent and he was not even allowed to go inside the factory premises, where the enquiry was to be conducted.

The respondent management by adopting unfair means made an agreement with the General Secretary of the union on 21-11-2005, wherein the respondent management insisted the union to get the resignation from the petitioner to enter into the Memorandum of Understanding. Since the workers were under the threat in the hands of the respondent they have no other way they consented to the unlawful demand of the respondent management and entered into the Memorandum of Understanding. As per the said understanding, the respondent management dropped the charge against the other workers, who placed under suspension for the same allegation. The petitioner approached the respondent management either to conduct the domestic enquiry or to give employment, but the respondent refused to give the employment and replied that he was already orally terminated from service. Hence, he raised the industrial dispute before the Labour

Officer (Conciliation) and the same was ended in failure. The respondent management adopted illegal method of keeping the petitioner under the suspension from 14-3-2005 without providing the subsistence allowances. Hence, the present dispute is filed before this court.

3. The respondent in his counter has stated as follows :—

The petitioner along with another co-worker committed act of assault and misbehaviour with senior officials in the respondent factory on 14-3-2005 when they came inside the factory to check the alterness of workmen in the night shift. The officials during the surprise check noticed some of the workmen sleeping during the duty hour and the photograph of the same have been taken. The petitioner along with another co-worker P. Ayappan on the assumption that the disciplinary action may be initiated, gheraoed the said two officials and snatched the camera and exposed the film role with an ulterior motive of tampering the evidence. They also indulged in acts of abusing the officials in the respondent factory in disrespectful manner. They used vulgar words and also attempted to assault the executives in the presence of other workmen. Hence, the petitioner was placed under suspension with effect from 14-3-2005 pending enquiry.

While the domestic enquiry was pending, the petitioner was instigating the other workers to indulge in acts of go slow in the guise of considering the pending demands. However, the respondent was prepared to negotiate any issue regarding revisions of wages and other benefits and did not come forward to concede the demand of the union to withdraw the disciplinary proceeding against the petitioner and another worker. Since the union was not accepting and also with a view of giving undue pressure started, unethical and coercive method within the premises, the respondent was constrained to declare lockout to all its workmen from 15-7-2005. There were several rounds of talks before the conciliation machinery and in the interest of the entire workmen, an option was given and in case the petitioner is interest, he can resign and his account would be settled so that a positive atmosphere could be created for lifting of lockout. The respondent also agreed for upward revision of wages. The union keeping the option on mutual interest negotiated the matters with the respondent and entered into a Memorandum of Understanding on 21-11-2005 which was subsequently converted as a settlement under

section 12(3) of Industrial Disputes Act 1947 before the Labour Officer (Conciliation) on 21-2-2006. However the petitioner neither submitted his resignation nor came forward to get his settlement. Therefore the question of termination by the respondent does not arise. It is well settled principle in collective bargaining mechanism the role of the union is vital and any understanding or settlement arrived at with the union will bind all its members and in the case of section 12(3) settlement to the future members also. Therefore, the petitioner cannot raise the dispute before the respondent. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent, no oral evidence was adduced, but Ex.R1 to Ex.R7 were marked.

5. *The point for consideration is :*

Whether the industrial dispute can be allowed?

6. *On this point :*

The contention of the petitioner is that he was the President of Superfil Products Workers Union and since he raised voice on behalf of the union and in order to victimise him, the respondent issued a false charge sheet, dated 24-3-2005 alleging that he slept during the working hours on 14-3-2005 and without conducting the enquiry, he was terminated from service. In order to prove his claim, the petitioner has examined himself as PW.1. PW.1 has marked the copy of the suspension order, dated 14-3-2005 as Ex.P1, copy of the charge sheet, dated 24-3-2005 as Ex.P2, copy of the charge sheet, dated 19-3-2005 as Ex.P3.

7. *Per contra*, the contention of the respondent is that the petitioner along with another co-worker committed act of assault and misbehaviour with senior officials in the respondent factory on 14-3-2005 when they came inside the factory to check the alterness of workmen in the night shift and snatched the camera and exposed the film role with an ulterior motive of tampering the evidence and they also indulged in act of abusing the officials in the respondent factory in disrespectful manner and they used vulgar words and also attempted to assault the executives in the presence of other workmen and hence, the petitioner was placed under suspension with effect from 14-3-2005 pending enquiry.

8. In order to support his claim, no oral evidence was adduced on the side of the respondent. But the copy of the complaint received from the employee of respondent by name Mahendran to the Inspector of

Police, Mangalam Police Station was marked as Ex.R1, copy of the complaint sent by the said Mahendran to the Vice-President of the respondent company as Ex.R2 and copy of the complaint received from the another employee by name Ravikumar to the Inspector of Police as Ex.R3. On perusal of Ex.R1 to Ex.R3, it is seen that for an incident, which alleged to have been taken on 14-3-2005, separate complaints have been given to the Inspector of Police, Mangalam Police Station. Further there is no endorsement by the officer of the respondent company in the complaints under Ex.R1 and Ex.R3. If really the Ex.R1 and Ex.R3 have been given to the police, there would have been seal of the police station. But no such endorsement or seal were found in Ex.R1 and Ex.R3. Apart from the above, there is no explanation from the respondent that whether any FIR has been registered based on the said complaints under Ex.R1 and Ex.R3. Hence, Ex.R1 to Ex.R3 cannot be taken into consideration, as the said documents have been created for the purpose of this case.

9. The learned counsel for the petitioner has submitted that for the same incident, two different charge sheets were issued under Ex.P2 and Ex.P3 and the petitioner submitted his detailed explanation to the above said charges under Ex.P4 and on receipt of Ex.P4, the respondent issued the enquiry notice, dated 29-3-2005 under Ex.P6 asking him to appear before the Enquiry Officer at Chennai and on receipt of the said enquiry notice, the petitioner submitted his objection letter, dated 21-5-2005 under Ex.P6 and requested the respondent to conduct the enquiry at Pondicherry and without conducting any enquiry over the above said charges, orally denied employment to the petitioner stating that the said trade union entered into an agreement dated 21-5-2005 under Ex.P7 with the respondent and to which in clause 6 of the agreement, all the members of the said trade union unanimously agreed that the petitioner shall give resignation to the respondent management and hence the respondent without conducting any enquiry on the charge levelled against the petitioner, orally terminated the service of the petitioner and denied employment.

10. The learned counsel for the respondent would submit that after suspension, the petitioner indirectly put pressure to withdraw the disciplinary proceedings against him and the petitioner along with other office bearers had several rounds of talks on the wage revision and other demands before the conciliation machinery and could not bring into an amicable settlement and in such a situation majority of the workmen felt that the settlement could not be arrived at due to the negative attitude of the petitioner, who

has acting as the President of the trade union and therefore, they negotiated the issue without presence of the petitioner and a settlement under section 12(3) was arrived at and according to the settlement, the petitioner who was placed under suspension had to tender his resignation and the management could relieve him and settle his accounts and it was agreed by the majority of the union office bearers in the interest of protecting the industry as a whole and as far as the said settlement, it binds all the persons, who were employed at the time and also the future employees and in such a situation, raising a dispute under section 2(A) of Industrial Disputes Act is not only against the principles laid down under the collective bargaining mechanism and also contrary to the provisions laid down under the Industrial Disputes Act.

11. According to the respondent, the charge sheet was issued under Ex.R5 and the enquiry notice was sent under Ex.P5 to the petitioner. But as admitted by the respondent, the enquiry has not been conducted. The respondent has stated that the settlement under section 12(3) was arrived at, as per which the petitioner has to tender his resignation and based on the said resignation, the respondent would relieve him and settle his account. When the enquiry was pending, what is the necessity for the respondent to include the said clause. This would clearly show that in order to victimise him, the said clause has been included in the said settlement.

12. The petitioner was issued with a charge sheet alleging that he was slept during the working hours on 14-3-2005 and it is the duty of the respondent to conduct the inquiry and in the inquiry sufficient opportunities have to be given to the petitioner and then only taken action against him based on the enquiry report submitted by the Enquiry Officer and before termination, the second show cause notice has to be issued to the petitioner and after getting explanation, the respondent has to terminate him from service. It is pertinent to refer the following decisions, which are relevant to this case:—

*2002(4) L.L.N. 850 :*

*State of Uttar Pradesh Versus Presiding Officer, Labour Court, Agra and another :*

“Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable.”

*1988 1 L.L.N. Page 259 :*

*Gaurishankar Vishwakarma Versus Eagle Soring Industries (P) Limited and others:*

“Industrial dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold an enquiry - it is for employer to prove such abandonment - Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work.”

13. Though the respondent has issued a charge sheet to the petitioner and notice of enquiry, the enquiry has not been conducted before the termination of his service, as admitted by him. It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case, the respondent has done neither. It was for the employer to prove that the petitioner slept in the working hours on 14-3-2005. In the absence of any such evidence, the contention of the learned counsel for the respondent that the petitioner slept during the working hours, cannot be accepted. Further the respondent adopted illegal method of keeping the petitioner under the suspension from 14-3-2005 without providing the subsistence allowance, which is against law. In the above circumstances, the termination of the petitioner is bad in law and the same is liable to be set aside.

14. The respondent has not even pleaded or proved that the petitioner is gainfully employed after his termination. Hence, the petitioner is entitled for reinstatement with continuity of service and back wages and other attendant benefits. Accordingly, this point is answered.

15. In the result, the industrial dispute is allowed and the petitioner is entitled for reinstatement with continuity of service with full back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 15th day of February, 2013.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.



*List of petitioner's witnesses :*

PW.1 — 29-11-2012 — Selvam

*List of petitioner's exhibits :*

- Ex.P1 — Copy of the suspension order, dated 14-3-2005.
- Ex.P2 — Copy of the charge sheet, dated 24-3-2005
- Ex.P3 — Copy of the charge sheet, dated 19-3-2005
- Ex.P4 — Explanation given by the petitioner to the respondent, dated 26-3-2005.
- Ex.P5 — Copy of the enquiry notice, dated 29-3-2005
- Ex.P6 — Petitioner's representation to the respondent, dated 31-3-2005.
- Ex.P7 — Settlement, dated 21-11-2005
- Ex.P8 — Copy of the claim statement filed by the petitioner, dated 8-1-2007.
- Ex.P9 — Copy of the counter filed by the respondent, dated 22-1-2007.
- Ex.P10 — Rejoinder filed by the petitioner, dated 7-5-2007.
- Ex.P11 — Failure report, dated 12-10-2007.

*List of respondent's witnesses : Nil.**List of respondent's exhibits :*

- Ex.R1 — Copy of complaint from Mahendran to Inspector of Police, Mangalam P.S., dated 14-3-2005
- Ex.R2 — Copy of the complaint from Mahendran to Vice-President of the respondent company, dated 14-3-2005.
- Ex.R3 — Copy of the complaint from Ravikumar to Inspector of Police.
- Ex.R4 — Copy of the memo issued to the petitioner, dated 14-3-2005.
- Ex.R5 — Copy of the charge sheet, dated 24-3-2005 issued to the petitioner.
- Ex.R6 — Copy of Memorandum of Understanding, dated 21-11-2005.
- Ex.R7 — Copy of Memorandum of Settlement, dated 24-2-2006.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY  
**ELECTRICITY DEPARTMENT**

*No. 1/ED/EE-II/JE/F-C/GRF/2013-14.*

*Puducherry, the 5th June 2013.*

**NOTIFICATION**

The Department of Electricity, Union territory of Puducherry invites applications from qualified persons for consideration of appointment for the post of Chairperson in Consumer Grievance Redressal Forum (CGRF) for Electricity Department for a period of 3 years. The candidate shall be less than 65 years of age. The candidate shall hold office for a term of three years from the date of appointment or till he attains the age of 65 years whichever is earlier and should possess the following qualifications:

A person possessing degree in engineering, preferably in electrical/mechanical and having served as Executive Engineer in power sector and having at least 20 years experience in power sector or retired District Judge/Additional District Judge or retired Judicial Officer having at least 15 years of experience in legal/judicial service.

The pay and allowances and other conditions of service of the member from amongst the serving officers shall be the same as he shall be otherwise entitled while in service. The Chairperson selected from all other category shall be eligible to receive a consolidated remuneration of ₹ 50,000 (Rupees fifty thousand only) per month. He shall also be entitled for 12 days casual leave in a calendar year.

The eligible candidates who are willing to be considered for the post shall apply directly to the Superintending Engineer-I, Electricity Department, No. 137, Nethaji Subash Chandra Bose Road, Puducherry-605 001 in plain paper with details, (i) Name and address, (ii) Attested copies of educational qualification certificates, (iii) Experience Certificate and (iv) Birth certificate, so as to reach their applications on or before 28-6-2013 at 5.45 p.m. Applications received without proof of educational qualifications, experience certificate, etc., addressed to any officer/office other than mentioned above and after due date and time will not be considered. Candidates in service shall submit their applications through proper channel. The details are also available in the department website: <http://electricity.puducherry.gov.in>.

**SUPERINTENDING ENGINEER-I.**